

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DON STEVENSON DESIGN, INC.,

Plaintiff,

v.

CASE NO. 5:15-cv-1128

TBP ENTERPRISES I, LTD.,
TBP ENTERPRISES, INC. and
TIMOTHY B. POWELL,

Defendants.

COMPLAINT

Plaintiff sues Defendants and alleges:

JURISDICTION AND VENUE

1. This action arises under the Federal Copyright Act of 1976, Title 17, United States Code. Jurisdiction is founded on Title 28, United States Code, Sections 1331, 1338(a). Venue is conferred by Title 28, United States Code, Section 1400(a).

THE PARTIES

2. Plaintiff, DON STEVENSON DESIGN, INC. (“DSD”), is a corporation organized and existing pursuant to the laws of the State of Florida, with its principal place of business at 2950 Tamiami Trail North, Suite 16, Naples, Florida 34103. DSD is a residential design firm engaged in the business of designing homes.

3. Defendant, TBP ENTERPRISES I, LTD. (“TBP I”), is a corporation organized and existing pursuant to the laws of the State of Texas, with its principal place of business at 7790 U.S. Highway 281 N., Suite 201, Spring Branch, Texas 78070. TBP I is a general contractor that

builds single family homes.

4. Defendant, TBP ENTERPRISES, INC. (“TBP”), is a corporation organized and existing pursuant to the laws of the State of Texas, with its principal place of business at 7790 U.S. Highway 281 N., Suite 201, Spring Branch, Texas 78070. Upon information and belief, TBP is a general partner of TBP I who participated in and stands to benefit from the infringement referenced below.

5. Upon information and belief, Defendant, TIMOTHY B. POWELL (“Powell”), is a citizen of the United States whose address is 7790 U.S. Highway 281 N., Suite 201, Spring Branch, Texas 78070. Powell is the President of TBP.

COUNT I
COPYRIGHT INFRINGEMENT OF THE SEA BREEZE

6. DSD realleges paragraphs 1 through 5 above.

7. DSD is the creator and original owner of an original architectural work entitled and advertised as the “Sea Breeze.” Reduced copies of the floor plans and elevations of the Sea Breeze are attached hereto as *Exhibit 1* and incorporated by reference into this Complaint. Full size construction drawings are available but have not been attached due to their size and bulk.

8. The Sea Breeze was originally created by DSD in or around 2006.

9. DSD complied in all respects with the Federal Copyright Act and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of the Sea Breeze, and received from the Register of Copyrights a Certificate of Registration, dated and identified as follows: “July 28 2014, VAu 1-175-859.” Said Certificate of Registration is attached hereto as *Exhibit 2*.

10. DSD is the owner of the entire right, title and interest in and to the Sea Breeze, and in and to the copyrights thereon and the registrations thereof.

11. After the Sea Breeze was created, and without any authorization whatsoever, Defendants infringed said copyright by advertising, designing, marketing, constructing and participating in the construction of one or more residences which were copied largely from or were exact duplicates of the Sea Breeze or modifications thereof. These include, but may not be not limited to, plans for the homes located at 6118 Sierra Avila, San Antonio, Texas 78257, and 8618 Terra Mont Way, Helotes, Texas 78203. Defendants also constructed and/or sold houses based on the infringing designs.

12. In addition to the foregoing, Powell may also be liable for the infringement referenced herein through the doctrines of contributory and vicarious liability, since he contributed to, supervised, approved and directed the design, construction and advertising of the infringing houses and plans, and financially benefitted from the design and/or the construction of the houses.

13. Powell may also be liable for the infringement referenced herein through the doctrines of contributory and vicarious liability, because Powell was involved in and authorized, and was able to supervise and approve, the house designs to be built, along with TBP and TBP I's general building and sale activities.

14. During the period of the infringing activity, Powell had an ownership interest in TBP and/or TBP I.

15. During the period of the infringing activity, Powell was an officer, director or member of TBP and/or TBP I.

16. Powell stood to benefit from the construction and sale of the houses at issue.

17. For each of the infringing houses at issue, TBP and/or TBP I acted as the general contractor.

18. DSD is entitled to recover its actual damages incurred as a result of the Defendants' infringing activities, as well as any profits of the Defendant infringers.

19. In the alternative, DSD is entitled to recover statutory damages of up to \$150,000.00 from each infringer for each act of infringement.


20. DSD has employed the services of the law firm of Parrish, White & Yarnell, P.A. to prosecute this action and has agreed to pay same a reasonable fee.

WHEREFORE, Plaintiff, DON STEVENSON DESIGN, INC., requests the following relief:

- A. That Defendants be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' infringement of Plaintiff's copyright and to account for all gains, profits and advantages derived by the Defendants through their infringement of Plaintiff's copyright;
- B. That Defendants be required to pay to Plaintiff the costs of this action and reasonable attorney's fees to be allowed Plaintiff by the court; and
- C. Such other and further relief as is just.

PLAINTIFF DEMANDS TRIAL BY JURY.

Respectfully submitted this 9th day of November, 2016.


Floyd S. Yarnell, Esquire
Florida Bar No. 184209
PARRISH, WHITE & YARNELL, P.A.
3431 Pine Ridge Road, Suite 101
Naples, Florida 34109
Ph. 239/566-2013; Fax 239/566-9561
Primary Email: ply@napleslaw.us
Secondary Email: karlaschooley@napleslaw.us
chrisrell@napleslaw.us
Attorneys for Plaintiff